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No. 80-1666

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1980

JOHN R. LARSON, et al.,

*Appellants,*

vs.

PAMELA VALENTE, et al.,

*Appellees.*

On Appeal
From the United States Court of Appeals
for the Eighth Circuit

## BRIEF OF THE GREATER MINNEAPOLIS ASSOCIATION OF EVANGELICALS, AS AMICUS CURIAE IN SUPPORT OF AFFIRMANCE

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## BRIEF OF THE GREATER MINNEAPOLIS ASSOCIATION OF EVANGELICALS, AS AMICUS CURIAE IN SUPPORT OF AFFIRMANCE

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### INTEREST OF AMICUS CURIAE[1]

Amicus Curiae is a non-profit tax-exempt corporation established in 1970 to provide and promote fellowsh'p among individual Christians, churches and other Christian

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[1]The letters of consent of the parties to the filing of this brief have been filed with the Clerk pursuant to Rule 36.1.

organizations in the City of Minneapolis and its neighboring area; to provide a vehicle for voluntary united action among all evangelical churches in the area; and to promote the work, interests and all phases of the program of the National Association of Evangelicals with which it is affiliated. Members of the Amicus Curiae are churches, organizations or individuals who reside in the area and who either are members of the National Association of Evangelicals or who subscribe to the doctrinal statement of N.A.E.[2] It's work is managed by a Board of Directors of twenty persons.

Amicus Curiae sponsors Christian fellowship activities and Bible study groups of voluntary associations of Christian peace officers, teachers, clergy and singles groups. It sponsors tour groups; promotes and subsidizes a half-way house and vocational training for persons recently released from prison. Amicus Curiae maintains a regular counseling service for troubled persons. It owns group homes for dependent or neglected girls who need social, mental, physical, emotional and spiritual attention.

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[2]The doctrinal statement of faith of the National Association of Evangelicals is:

(1) We believe the Bible to be the inspired, the only infallible, authoritative Word of God. (2) We believe that there is one God, eternally existent in three persons: Father, Son and Holy Spirit. (3) We believe in the deity of our Lord Jesus Christ, in His virgin birth, in His sinless life, in His miracles, in His vicarious and atoning death through His shed blood, in His bodily resurrection, in His ascension to the right hand of the Father, and in His personal return in power and glory. (4) We believe that for the salvation of lost and sinful man, regeneration by the Holy Spirit is absolutely essential. (5) We believe in the present ministry of the Holy Spirit by whose indwelling the Christian is enabled to live a godly life. (6) We believe in the resurrection of both the saved and the lost; they that are saved unto the resurrection of life and they that are lost unto the resurrection of damnation. (7) We believe in the spiritual unity of believers in our Lord Jesus Christ.

Its ministry includes adoption services, crisis pregnancy counseling and supportive service and chaplaincy services to public agencies. It sponsors a variety of meetings and seminars on religious topics of interest to its members and the public at large.

Among its employees Amicus Curiae maintains a full-time director of development whose duties include fund-raising and solicitation for its various ministries. Some of its ministries are operated through separate non-profit corporations with their own Board of Directors. The membership of these ministries is limited to the Board of Directors of such ministry. Each ministry attempts to develop its own source of funding and its own constituency to the fullest extent possible and to rely on the parent Amicus Curiae only as may be absolutely necessary. Amicus Curiae and its affiliated ministries use a variety of methods of communication and fund raising appeals. These include banquets to which interested persons are invited, radio programs, direct mail appeals, rummage sales and personal solicitations. A group of members and supporters meet regularly to pray for the needs of the various ministries. *Fund raising is an integral and inseparable part of its religious witness and ministry.*

Some of the member churches or organizations of the Amicus Curiae are operated and controlled by a Board of Directors or Boards of Trustees who are the sole members of the organization and who contribute less than fifty percent of the funds necessary to maintain their ministry. Other individual members of Amicus Curiae attend local evangelical churches whose membership consists solely of the Board of deacons, Board of elders or directors of the

church. Again, these formal members contribute less than fifty percent of the funds necessary to maintain their church and its ministry. Thus, some of the activities of the Amicus Curiae, its affiliated ministries, as well as those of its members or supporters, are or are likely to be subject to the charitable solicitation act, if it is upheld.[3]

The legal position taken by Amicus Curiae in support of Appellees in the issues before this Court in no way should be construed to be in doctrinal agreement with the religious beliefs and practices of the Appellees and, indeed, many of their beliefs and practices are specifically disavowed by this Amicus Curiae. The interest of this Amicus Curiae arises out of a concern for the preservation of religious liberty, freedom of speech and freedom of association and a desire to provide the Court with an analysis of the various legal aspects of this case which have not been adequately addressed.

## SUMMARY OF ARGUMENT

The statute at issue should be held unconstitutional because it is unconstitutionally vague, overbroad and burdensome to the fundamental liberties of freedom of speech, freedom of religion and freedom of association. Its provisions of registration, inspection and control violate the Establishment Clause of the First Amendment to the Federal Constitution because there is excessive entanglement between church and state. The statute further violates the Establishment Clause because it violates the

[3]It is difficult to know for certain whether an organization is subject to the act because of vagueness of its terms and also because no regulations have been adopted to attempt to specifically and clearly explain what is intended.

principle of governmental neutrality between religious groups as there is no equal treatment of the individual rights of conscience. The statute intrudes on fundamental rights of individuals and groups and violates the Equal Protection Clause of the Fourteenth Amendment to the Federal Constitution as the legislative purpose does not meet the compelling state interest test and there are lesser restrictive alternates available. Finally, the statute evidences a claim of the state to pervasively control churches, religious groups and other voluntary associations without authority to do so in violation of the Minnesota State Constitution.

## ARGUMENT

### A. THE REGISTRATION, INSPECTION AND CONTROL PROVISIONS OF THE STATUTE ARE UNCONSTITUTIONALLY VAGUE, OVERBROAD AND BURDENSOME TO FREEDOM OF SPEECH, FREEDOM OF RELIGION AND FREEDOM OF ASSOCIATION.

This Court has consistently struck down as unconstitutional statutes or ordinances similar to the one at issue, that are vague and excessively burdensome to fundamental rights and liberties. In *Lovell v. Griffin*, 303 U.S. 444 (1938), ordinances were struck down on First Amendment grounds where the issuance of a permit to solicit or pass out handbills was discretionary with a government official. The possibility of fraud was not a sufficient ground to validate the ordinance. In *Cantwell v. Connecticut*, 310 U.S. 296 (1940), the Court again set aside a conviction under a statute forbidding solicitation of con-

tributions and held that the discretionary determination by a public official as to what is a religious cause was considered to be an invalid prior restraint on the free exercise of religion. In the statute in question the discretion of the state official is set forth in the words "public interest", "fair" or "material." In *Jamison v. Texas,* 318 U.S. 413 (1943), the Court held that distribution of handbills which might seek in a lawful fashion to promote the raising of funds for religious purposes could not be prohibited. This was confirmed in *Murdock v. Pennsylvania,* 319 U.S. 105 (1943). In *Thomas v. Collins,* 323 U.S. 516 (1945), it was held that the First Amendment barred enforcement of a state statute requiring a permit before soliciting membership in any labor organization. The Court ruled that solicitation and speech were so intertwined that a prior permit could not be required. *Hynes v. Mayor of Oradell,* 425 U.S. 610 (1976), invalidated a city ordinance requiring an identification permit for canvassing or political purposes as the wording of the ordinance was "unacceptably vague." And very recently in *Schaumburg v. Citizens for a Better Environment,* 444 U.S. 620 (1980), this Court struck down an ordinance which assumed that any organization which spent more than 25% of their receipts on salaries and administrative expenses was fraudulent. The Court recognized that this was an undue burden on First Amendment liberty where the organization used the same persons to perform research, advocacy or public education functions as well as solicitations.

The statute is also over-broad. For example, its definition of the term "solicit" or "solicitation" does not

meet necessary requirements of a narrowly drawn regulation. *Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620 (1980); *NAACP v. Button*, 371 U.S. 415, 438 (1963). The terms solicit or solicitation are defined at Section 309.50 Subdivision 10—

Subd. 10. "Solicit" and "solicitation" mean the request directly or indirectly for any contribution, regardless of which party initiates communication, on the plea or representation that such contribution will or may be used for any charitable purpose, and include any of the following methods of securing contributions:

(1) Oral or written request;

(2) The distribution, circulation, mailing, posting, or publishing of any handbill, written advertisement, or publication;

(3) The making of any announcement to the press, over the radio, by television, by telephone, or telegraph concerning an appeal, assemblage, athletic or sports event, bazaar, benefit, campaign, contest, dance, drive, entertainment, exhibition, exposition, party, performance, picnic, sale, or social gathering, which the public is requested to patronize or to which the public is requested to make a contribution;

(4) The sale of, offer, or attempt to sell, any advertisement, advertising space, book, card, magazine, merchandise, subscription, ticket of admission, or any other thing, or the use of the name of any charitable person in any offer or sale as an inducement or reason for purchasing any such item, or the making of any statement in connection with any such sale, that the whole or any part

of the proceeds from any such sale, that the whole or any part of the proceeds from any such sale will be used for any charitable purpose. A "solicitation" shall be deemed completed when made, whether or not the person making the same receives any contribution or makes any such sale.

It would be hard to imagine a more broadly drawn definition and seems clearly intended to have that effect. It would constitute a substantial burden on fundamental liberties of speech, religion and association It is not limited as to time place and manner which is required by a number of decisions of this Court if restrictions are placed on fundamental liberties. *Grayned v. County of Rockford*, 408 U.S. 104 (1972); *Kovacs v. Cooper*, 336 U.S. 77 (1949); *Cox v. New Hampshire*, 312 U.S. 569 (1941); *Heffron v. International Society for Krishna Consciousness*, 49 U.S. L.W. 4762 (1981). The statute fails to pass any of the basic constitutional tests.

## B. THE REGISTRATION, INSPECTION AND CONTROL PROVISIONS OF THE STATUTE VIOLATE THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT BECAUSE THERE IS AN EXCESSIVE ENTANGLEMENT BETWEEN CHURCH AND STATE.

In order to determine whether legislation violates the Establishment Clause the Court has developed a three-pronged test. First, the statute must have a secular legislative purpose; second, its principal or primary effect must neither advance nor inhibit religion and third, the statute must not create "entanglement" between government and religion by "on-going and intrusive administra-

tive relationships or creation of 'political divisiveness'." *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971).

Section 309.52, subd 1 of the statute precludes any charitable organization, including non-exempt churches, from soliciting contributions unless *prior thereto* (emphasis added) it files a registration statement containing certain specified information together with "such other information as the department may by rule or order require to promote *fairness* of the solicitation and to assure full and fair disclosure of *all material information* to the department." (309.52 subd. 1, (p)) Under the provisions of subd. 1 (p) above the state authorities have nearly complete and unfettered discretion. They can require any information which promotes "fairness of solicitation" and assures "full and fair disclosure of all material information". These over-broad terms allow a blanket authority to the state authorities to determine what must be required as "fair" or "material". This gives rise to insufficiency of due process to those who are required to comply with its provisions. In addition, the possibilities for excessive entanglement between the applicant and state authorities are thus almost endless. The state authorities are free to inquire about almost anything they want subject only to a vague "fairness" or "material to a full and fair disclosure" standard.

In addition, Section 309.543, subd. 1, authorizes the state to suspend or revoke any registration if it finds that such action is in the *public interest* and that the registrant:

> "(a) has filed an application for a license or registration which is *incomplete* in any *material respect* or contains any statement which, in light of the cir-

circumstances under which it is made, is *false or misleading* with respect to any material fact;

(b) has engaged in a *fraudulent, deceptive or dishonest practice;*

(c) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of charitable solicitations; or

(d) has violated or failed to comply with any provision of this chapter or any rule or order under this chapter." (emphasis added)

Again, the statute uses over-broad designations of "public-interest"[*] to suspend or revoke charitable registrations. This gives a public official very broad discretion to determine what the state official believes to be in the public interest. Of necessity, the definition of "public interest" as determined by the public official will be compared with the religious beliefs and practices of an organization. This would not only be done initially but the state is authorized to do so on an on-going basis. This creates a number of problems. First, there is the necessity for the state to learn in some detail the beliefs and practices of the organization. This would require review of its structure, basis of belief and scrutiny of its practices. The "public interest" test looks suspiciously like a "religious test" which has been specifically prohibited by this

[*]The "public interest" test violates one of the basic principles of a free society. "If there is any fixed star in our constitutional constellation, it is that no official . . . can prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion . .", Justice Jackson, *West Virginia State Board of Education v. Barnette,* 319 U.S. 624, 642 (1943).

Court. *Cantwell v. Connecticut*, 310 U.S. 296 (1940). Also, the word "public interest" is very vague. What is the public interest? Political bodies debate it every day. The newspapers are full of discussion about what is or is not in the public interest. An organization (whether religious or not) would never know for sure where it stood on this point.

The charitable registration can also be suspended or revoked if one engages in a fraudulent, deceptive or dishonest practice. (Section 309.532 Subd. 1, (b)). What is a fraudulent, deceptive or dishonest practice? Again this is vague and over-broad and without definite and certain standards. In the case of religious organizations another problem arises with this type of language. There is considerable danger that the state would (if it relied on this language) attempt to inquire into the truth or falsity of the religious beliefs of an organization. This the state cannot do. As this Court stated in *United States v. Ballard*, 322 U.S. 78, 86 (1944):

> Heresy trials are foreign to our Constitution. Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs.

Section 309.515, subd. 1 of the statute exempts those charitable organizations that did not receive contributions in excess of $10,000 in the preceeding year, and those religious organizations which received in the preceeding year more than half of their contributions from: (1) persons who are *members of the religious organization* or (2) from a parent or affiliated organization; or (3) from a combination of the sources listed in (1) and

(2). (emphasis added). The term "member" excludes those who are granted membership upon making a contribution as a result of a solicitation. Whether one is a "member" of a religious organization is not always readily ascertainable. For example, is a person a de facto "member" who is on a mailing list of an organization and who periodically receives a newsletter of the organization and has contributed to the organization at some time in the past and shares basically the same religious beliefs? Or consider the situation of a church whose formal membership structure is limited to a Board of deacons or elders. If a person regularly attends the worship service and a Bible study or prayer group once a week, is he a member of the organization? If not, does he become a member if he pledges money to the religious organization? One can see at least two factors, inter alia, that emerge from these two examples:

> (1) The state whether by legislative enactment, regulation or judicial interpretation will end up defining who are the members of a religious organization;
>
> (2) The state in order to determine who are members and who are not, must excessively involve itself with the religious organization; not only initially but on an ongoing basis, to find out the nature and extent of their involvement, how much information about the operation has been furnished, whether it has been fair, etc.

This is not the type of activity by public officials that is permitted under our Constitution and public officials cannot be empowered to act in any such capacity.

In summary, the statute attempts to *quantify* what is only subject to *quality* tests (which are beyond the purview of the state). One cannot give a number or an efficiency rating to matters such as truth or falsity or good or evil or faith or trust or anything transcendent. *Small is Beautiful; Economics as if People Mattered,* E.F. Schumacher (1973) pages 45-46. The statute attempts to reduce religious beliefs and practices solely to the material and the state transgresses its authority by attempting to judge such values by the fallible human mind of a state official. Religious groups are not subject to recall by the state like defective automobiles in need of repair. The principles of "consumerism" cannot be applied to what is transcendent. This is the ultimate and fundamental error.[5]

## C. THE STATUTE VIOLATES THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT BECAUSE THE GOVERNMENT IS NOT NEUTRAL BETWEEN RELIGIOUS GROUPS.

This Court has consistently held that the governnment must be neutral in dealing with religious matters. *Walz v. Tax Commission,* 397 U.S. 664, 669 (1970); *Abington*

[5]Justice Jackson understood this principle very well. In *Ballard* he said: "The chief wrong which false prophets do to their following is not financial. The collections aggregate a tempting total, but individual payments are not ruinous. . . . But the chief harm is on the mental and spiritual plane. There are those who hunger and thirst after values which they feel wanting in their humdrum lives. They live in mental confusion or moral anarchy and seek vaguely for truth and beauty and moral support. When they are deluded and then disillusioned, cynicism and confusion follow. The wrong of these things . . . is not in the money the victims part with half so much as in the mental and spiritual poison they get. But that is precisely the thing the Constitution put beyond the reach of the prosecutor, for the price of freedom of religion or of speech or of the press is that we must put up with, and even pay for, a good deal of rubbish. *United States v. Ballard,* 322 U.S. 78, 94-95 (1943).

*School District v. Schempp,* 374 U.S. 203 (1963); *Sherbert v. Verner,* 374 U.S. 398 (1963). As legal philosopher Edmond Cahn once said: "In America, Madison submitted most astutely, the rights of conscience must be kept not only free but *equal* as well." Cahn, *Confronting Injustice* 186-187 (1967). See also Madison. Memorial and Remonstrance against Religious Assessments 2, The Writings of James Madison 183-91 (G.Hunt ed 1901) reprinted in *Walz* supra at pp. 719-727. Yet, on the face of the statute there is discrimination among individual religious persons and groups based on how their membership is structured or based upon their particular method of obtaining funds to carry out their religious mission. There is no equal treatment of individual rights of conscience. This violates the Establishment Clause of the First Amendment.

### D. THERE HAS BEEN A DENIAL OF EQUAL PROTECTION OF THE LAW BECAUSE THE STATUTE INTRUDES UPON A FUNDAMENTAL RIGHT IN VIOTION OF THE FOURTEENTH AMENDMENT AND IT IS THEREFORE APPROPRIATE TO APPLY STRICT EQUAL PROTECTION ANALYSIS.

The Court has established two distinct standards for determining whether a statute or rule violates the Equal Protection Clause. In cases involving routine social or economic regulations, a classification is deemed valid unless it is purely arbitrary or "wholly irrelevant to the achievement of the State's objectives." *McGowan v. Maryland,* 366 U.S. 420, 425 (1961); *United States Department of Agriculture v. Moreno,* 413 U.S. 528, 533

(1973). On the other hand, when the classification at issue is inherently "suspect" or when it affects "fundamental rights", the Court has applied a much stricter standard. In such cases, the Court has held that the classification, to be valid, must "promote a *compelling* governmental interest," *Shapiro v. Thompson*, 394 U.S. 618, 634 (1969) (emphasis in original), or serve some "overriding" purpose. *McLaughlin v. Florida*, 379 U.S. 184, 192 (1964). See also *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942) ("strict scrutiny" of sterilization law required); *Levy v. Louisiana*, 391 U.S. 68, 71 (1968) (Court is "extremely sensitive" to classifications which affect "basic civil rights"); *Graham v. Richardson*, 403 U.S. 365, 372 (1971) ("heightened judicial solicitude" is required for certain classes of persons); Note, "Developments in the Law—Equal Protection", 82 *Harv. L. Rev.* 1065, 1076-1132 (1969).

Amicus curiae submits that the stricter standard of equal protection analysis is applicable in this case. The classification at issue here affects a "fundamental right", namely, the constitutional right of persons and groups to freely exercise their religion. The activity of some is being classified differently from others' activities solely because of their method of exercise of religious obligations and it is appropriate to apply the type of strict equal protection scrutiny that was set out by the Court in *Reed v. Reed*, 404 U.S. 71, 75-76 (1971) and *Craig v. Boren*, 429 U.S. 190, 197 (1976) (the classification "must serve important governmental objectives and must be substantially related to the achievement of those objectives").

Freedom of religion is a fundamental personal right.

*Jones v. Opelika*, 316 U.S. 584, (1942) It holds a preferred position. *Follett v. McCormick*, 321 U.S. 573 (1944); *Murdock v. Pennsylvania*, 319 U.S. 105 (1943). The preferred position of freedom of religion is maintained as against the constitutional rights of owners of property. *Marsh v. Alabama*, 326 U.S. 501 (1945). In the instance of the state statute in question the purpose is to protect the public from possible fraud. This has been held to be a legitimate state interest but not a "compelling state interest." Strict scrutiny also reveals that there are lesser restrictive means[6] to accomplish the ends desired by the state. Therefore, the statute must be struck down. *Rowan v. Post Office Dept.*, 397 U.S. 728 (1970); *Martin v. Struthers*, 319 U.S. 141, 148 (1943); *Schneider v. State*, 308 U.S. 147, 164 (1939); *Schaumburg v. Citizens for Better Environment*, 444 U.S. 620, 639 (1980).[7]

## E. THE STATE CLAIMS A PLENARY POWER AND AUTHORITY TO PERVASIVELY CONTROL CHURCHES AND RELIGIOUS GROUPS BUT IT HAS NO RIGHT OR POWER TO DO SO.

The Minnesota State Constitution contains a Freedom

[6]One "lesser restrictive means" is, of course, voluntary disclosure of finances to supporters of an organization. Many organizations routinely do this. Also, in recent years a number of evangelical organizations formed the Evangelical Council on Financial Accountability, in an attempt to establish accounting standards and issue a seal of approval to those member organizations who comply with its standards. According to officials of the Council some 180 evangelical organizations were members in compliance with its standards as of June 30, 1981. See *Christianity Today*, October 5, 1979, pp. 57-58.

[7]Governmental regulations which interfere with the exercise of specific religious beliefs or principles should be scrutinized with particular care. *Sherbert v. Verner*, 374 U.S. 398, 402-403 (1963). These are areas of conduct which are beyond the power of the state to control even under regulations of general applicability. *Wisconsin v. Yoder*, 406 U.S. 205, 220 (1972).

of Conscience provision in its Bill of Rights (Art. 1, Section 16) which includes two important statements:

> "The enumeration of rights in this Constitution shall not deny or impair others retained by and inherent in the people."
>
> "nor shall any control of or interference with the rights of conscience be permitted, *or any preference be given by law to any religious establishment* or mode of worship. . ." (emphasis added)[8]

The amendments to the statute regulating charitable solicitations of some religious groups and not others is a clear example of the state attempting to establish a "preference by law" to certain religious establishments. On the face of the statute there is unequal treatment of religious persons and groups. It applies to some groups but not to others. The state lacks authority under its own Constitution to pass the amendments urged upon us. Attempts to control or interfere with the rights of conscience are barred by this provision.

The freedom of conscience article also makes it clear that rights of conscience are vested in the people—individually or collectively. The freedom of conscience provisions stand as a bulwark against intrusion by the state except in limited instances where the peace or safety of the state is threatened or used to attempt to excuse acts

[8]Rights of conscience provisions are not necessarily limited to churches or other "religious" individuals or groups. Many persons will involve themselves in certain other voluntary associations out of reasons of conscience including organizations assisting the poor, feeding the hungry or protecting the right to life and various others. Indeed, one should consider *any* charitable act, whether individual or collective, to arise out of the moral imperative of conscience as it represents something that *ought* to be done and is simply the *right* thing to do.

of licentiousness (Article 1, Section 16), none of which are claimed to be applicable here.

Where does this claim of the state to regulate and control religious activities come from? A quote from Walter Berns book entitled *The First Amendment and the Future of American Democracy* provides some guidance:

> "The modern tyrant does not encourage passivity among his subjects. On the contrary, they are expected to be public-spirited: to work for the State, to exceed production schedules, to be citizen soldiers in the huge armies, and to love Big Brother...The modern tyrant parades as a political philosopher, the heir of Nietzsche or Marx, with a historical mission to perform. He cannot leave his subjects alone." Footnote at page 220

The state increasingly is becoming the "modern tyrant" who cannot leave the people alone.* Even ones religious beliefs and practices must be subject to "public interest" tests; justice is determined by the state's standard of "fairness", the state measures the quality of each group's stewardship, the state licenses and inspects books and records and requires conformance to state standards; and whether one is even a member of a religious institution may be defined by the state. The statute in issue is a good example of reducing law to no more than a mechanistic tool. Rules and regulations condition the mind and control conduct in place of higher values.

Law even attempts to control religious activity and re-

*The April 10, 1978 issue of Time magazine reported that "legislative bodies of every size across America have been spewing forth laws at a prodigious rate, more than 100,000 in some years. . . Federal agencies are generating an additional 35,000 or more new regulations every year. pg. 56.

ligious institutions. Those deedmed "fit" are included in the society—those deemed "unfit" are excluded or seriously hampered. The basis of truth in the guise of "public policy" becomes the "new religion." The state begins to make a claim of supremacy over all of life—a new oppressor is arising in the process. It is ironic that the very structure that has been created to insure our freedoms now turns on its own citizens and begins to demand an ultimate allegiance to it. Jacques Ellul, the French theologian and professor of law notes in his book, *The Ethics of Freedom* (1976)

> "The oppressor is the one who turns dialogue into constraint, commandment into dead law, the state into a dictatorship, ideas into ideologies, beliefs into dogmas, and economic organizations into mechanisms of exploitation. All this is but the fruit of the oppressor who imitates God but turns his work upside down." p. 437.

That is precisely the danger with the statute which the State of Minnesota urges upon us. They require conformance by its individual citizens and various voluntary associations to a course of conduct almost completely determined by the state—the state increasingly becomes a dictator.

But the very essence of protection of the rights of conscience is that one is free to have ultimate allegiance to a higher Authority than the state.[10] That is one reason why

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[10]The incidents of Daniel in the Lion's den and the three men in the fiery furnace found in Chapters 3 and 6 of the Book of Daniel are reminders that only God is sovereign; the Apostile Paul in Romans 12:2 also admonishes Christians—"Do not be conformed to this world but be transformed by the renewal of your mind that you may prove what is the will of God, what is good and acceptable and perfect." The Holy Bible, Revised Standard Version.

the right of conscience are a cornerstone of a free society. We are not required to "get in step" with the state.

Perhaps we need to be reminded once again of the origins of rights and especially the right of religious liberty. The Preamble to the Minnesota State Constitution guides us to the source. Originally enacted in 1857 (and re-enacted in 1974) it states: "We, the people of the State of Minnesota, grateful to God for our civil and religious liberty, and desiring to perpetuate its blessings and secure the same to ourselves and our posterity, do ordain and establish this Constitution." The State Constitution makes it clear that civil and religious liberty and its blessings comes from God—not the state. Civil and religious liberty is not an act of grace from the state—its source lies elsewhere. It comes as an "endowment from our Creator"—from God. It is a gift to each person as a creature of the Creator. The state is not free to parcel out freedom and liberty to whoever it chooses because the source of liberty is not derived from the state. The state has exceeded its authority.

## CONCLUSION

Accordingly, this Court should affirm the order of the Court of Appeals for the Eight Circuit which enjoined the enforcement of this statute and further determine that this statute is unconstitutional.

Respectfully submitted,

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Dated: September 14, 1981.

## CERTIFICATE OF SERVICE

State of Minnesota

ss.:

County of Hennepin

BE IT REMEMBERED, on this 14th day of September A.D. 1981, before me, the Subscriber, a Notary Public for the State and County aforesaid, personally appeared, Thomas W. Strahan, who being duly sworn according to law, did depose and say that he mailed today, by First-Class postage pre-paid mail, three copies of the within Brief of the Greater Minneapolis Association of Evangelicals as Amicus Curiae in Support of Affirmance to the following attorneys:

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Thomas W. Strahan

SWORN TO AND SUBSCRIBED before me the day and year aforesaid.

Notary Public